

IN THE MATTER OF THE COMPLAINT TO REMOVE
RICHLAND COUNTY SHERIFF HARLAN MUEHLER

State of North Dakota, ex rel. certain)	
Richland County residents,)	
)	
Complainant,)	01-GOV-01
)	
-vs-)	ORDER OF REMOVAL
)	
Harlan Muehler,)	
)	
Respondent.)	
-----)	

BY: THE HONORABLE JOHN HOEVEN, GOVERNOR OF THE STATE OF
NORTH DAKOTA

This ORDER is entered pursuant to NDCC 44-11-07 following proceedings as outlined
below.

I. PROCEDURAL SYNOPSIS

On March 23, 2001, a complaint dated March 10, 2001 (“Complaint I”) was filed in the Office of the Governor, requesting that Richland County Sheriff Harlan Muehler be removed from office for misconduct and malfeasance. In summary, Complaint I alleges that Sheriff Muehler demonstrated prejudice against women, regularly referred to women in a highly derogatory fashion, displayed nude photos and a scantily clad statuette of a women in his patrol car and office, and destroyed evidence essential to a sexual harassment lawsuit filed against the county.

A second complaint against Sheriff Muehler (Complaint II), dated June 14, 2001 was filed with the Office of the Governor, by the Office of the Attorney General, alleging additional grounds for removal of Sheriff Muehler. In summary, Complaint II alleges

that Sheriff Muehler illegally misused public funds, unlawfully utilized public employees for personal services during work hours, and unlawfully diverted insurance proceeds and office fees into an illegal “slush fund” which he used to purchase personal items, provide personal gifts, and pay for political advertising.

In response to the filing of Complaint I and Complaint II, former State District Court Judge Maurice R. Hunke was appointed as a Special Commissioner to oversee the hearing process in accordance with North Dakota law. Special Commissioner Hunke conducted public hearings on April 20 and 26, 2001 at the Richland County Courthouse, Wahpeton, ND. The Office of Attorney General, Wayne Stenehjem, through Assistant Attorney General Robert P. Bennett, prosecuted Complaint I and Complaint II against Sheriff Muehler. Muehler was represented by his attorney, A. W. Stokes.

On July 26, 2001, Special Commissioner Hunke’s final report and all evidence received in the proceedings were filed with the Office of the Governor as required by law. Hunke recommended that Sheriff Muehler be removed from office based on a pattern of harassing language of an explicitly sexual nature, a gender bias against hiring women employees for some positions in the Sheriff’s Office, and the corrupt maintenance and use of an unlawful “slush fund” consisting of cash proceeds belonging to Richland County and its taxpayers.

II. ANALYSIS

My determination in this matter is based on the factual record established by Special Commissioner Hunke, as well as by Sheriff Muehler’s admissions contained in the “Stipulation and Waiver of Hearing” document (dated June 22, 2001) and the “Statement of Harlan Muehler” (dated June 20, 2001).

The record in this matter clearly establishes Sheriff Muehler's disturbing, workplace use of profoundly offensive and profane language such as "cunt", "cunts", "bitches", "fucking idiots", "fucking cunts" or "fucking bitches" in reference to various county employees, and Sheriff's Office employees.

Additionally, Muehler spoke graphically of his secretary's decision to change jobs, stating on separate instances that the employee "would lay on her back and spread her legs," that she "will lay on her back to get as far up the chain as she can....," and that "she just wants to move to Grand Forks so....can lay her on her back." The employee whom Muehler was referencing overheard Muehler's remarks to one group of county employees, then testified before Special Commissioner Hunke that she was very offended by the statement and "felt like someone punched [her] in the stomach."

Sheriff Muehler used the language referenced above in the course of his official duties as County Sheriff and in the physical and audible presence of other county employees. Additionally, the record in this case shows that Muehler refused to hire women for certain Sheriff's Office posts, and created a hostile work environment for female employees within his department.

Special Commissioner Hunke found that Sheriff Muehler maintained and exercised control of an unlawful slush fund that was never authorized by the Richland County Commission. The fund was filled with misappropriated cash taken from various sources including office service fees, cash receipts paid to the Sheriff's Office, proceeds which Sheriff Muehler obtained by cashing checks payable to the Sheriff's Office, and even one cash sum of \$3,557.51, the insurance proceeds paid on a claim for damage to a Sheriff's Office vehicle.

The slush fund was used by Sheriff Muehler to purchase a variety of items including steaks, liquor, beer, candy for parades, and cash gifts. On one occasion the fund was used to purchase a newspaper political advertisement. On another occasion money for Sheriff Muehler's re-election was commingled with other slush fund proceeds.

Sheriff Muehler admitted that the slush fund was under his "sole direction and control," a troubling fact, when one considers that the record in this case shows unexplained thefts occurred from the slush fund on at least two occasions, totaling approximately \$1,100 of public funds.

Muehler's defense of "ignorance" regarding the unlawful nature of the slush fund is not credible in light of his admission and other evidence indicating that he repeatedly concealed the account from detection by auditors. As Special Commissioner Hunke pointed out, ignorance, even if proven, is no defense under the law. By maintaining the unlawful slush fund, Sheriff Muehler violated North Dakota law.

III. CONCLUSION

Sheriff Muehler's use of guttural sexual profanity, sexually explicit references to female county employees and gender-biased hiring practices are unacceptable by any measure under North Dakota standards of behavior. I am convinced that Sheriff Muehler's actions created a hostile work environment prohibited by law.

In maintaining the unlawful slush fund, Sheriff Muehler violated several North Dakota statutes as well as the trust of the taxpayers of Richland County and the State of North Dakota. The record establishes a pattern of unlawful financial misdealing with the obvious overtone of political activity at public expense.

While the task before me is an unpleasant one, my duty under these circumstances is clear. The evidence against Sheriff Muehler mandates the exercise of the Governor's power of removal under NDCC 44-11. The citizens of North Dakota are entitled to know that the misconduct and malfeasance exhibited by Sheriff Muehler will not be tolerated.

I find that Sheriff Muehler's conduct constitutes misconduct and malfeasance in the plain and ordinary meaning of those terms. Accordingly, I hereby order the removal of Harlan Muehler as Richland County Sheriff, effective 9:00 A.M., August 17, 2001.

John Hoeven
Governor